

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
CONSOLIDATED DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E**

IN RE:	Friends of the Earth and Sierra Club,)	
	Complainant/Petitioner v. South Carolina)	
	Electric & Gas Company,)	
	Defendant/Respondent;)	
)	
)	
IN RE:	Request of the South Carolina Office of)	Pre-Hearing Brief
	Regulatory Staff for Rate Relief to SCE&G)	of
	Rates;)	The Office of Regulatory Staff
)	
)	
)	
IN RE:	Joint Application and Petition of South)	
	Carolina Electric & Gas Company and)	
	Dominion Energy, Incorporated for Review)	
	and Approval of a Proposed Business)	
	Combination between SCANA Corporation)	
	and Dominion Energy, Incorporated, as May)	
	Be Required, and for a Prudency)	
	Determination Regarding the Abandonment)	
	of the V.C. Summer Units 2 & 3 Project)	
	and Associated Customer Benefits and Cost)	
	Recovery Plans)	
)	

This matter comes before the Public Service Commission (“the Commission”) to decide the prudence of SCE&G’s abandonment and the prudence of the construction costs incurred for the V.C. Summer Units 2 and 3 Project (the “Project”) and then to set a just and reasonable, permanent rate to be charged to customers for the allowed construction costs even though the Project will never be used and useful for energy generation. After disallowance of all construction costs incurred following the false and misleading March 12, 2015 filing by SCE&G to modify the

approved schedule and budget, the permanent rate for the average residential household monthly bill, without merger savings, should be \$118.98 for twenty years of amortization.

I. STATEMENT OF THE CASE

In 2008, when seeking approval to construct the Project, SCE&G promised to be “completely transparent” with the Commission and its customers in constructing the Project. Ten years later, it is evident SCE&G not only failed to meet its promise of transparency, but it also misled and lied to the Commission and its customers regarding the true status of construction of the Project while simultaneously requesting and receiving rate increases tied to the financing of the Project under the Base Load Review Act (“BLRA”).

SCE&G filed its March 12, 2015 petition to modify the schedule and costs using forecasted numbers that it knew were not accurate. The Commission should disallow all costs incurred after March 12, 2015. By that date the Project was no longer “being constructed in accordance with the approved schedules, estimates, and projections” or within acceptable ranges of those approved numbers, *see* S.C. Code § 58-33-275(C), and it was no longer prudent for SCE&G to incur costs on the Project..

SCE&G’s imprudence in incurring costs on the Project occurred in two time periods. The first period until 2014 contained misfeasance respecting some of the costs incurred, and the second period after 2014 involved malfeasance in continuing the Project based on deception of the Commission. The first period extends from SCE&G’s original BLRA petition in 2008 until August 2014, when SCE&G’s internal Estimate at Completion (“EAC”) team received and analyzed the Consortium’s forecasted costs and time to complete construction of the Project. During these first six years, the Project was beset by a number of problems that caused initial delays in licensing, years-long delays in module construction and delivery, design delays, lack of

construction productivity and completion, and not having a fully integrated, resource loaded construction schedule that was not artificially constrained. The common cause of all these problems was SCE&G's failure to properly and proactively supervise and address the problems with its Consortium of construction contractors, Westinghouse Electric Company ("WEC") and Chicago Bridge & Iron Company ("CB&I").

After years of complaints and negotiations, SCE&G sent a "roll-up" letter dated May 6, 2014 to the Consortium CEOs, which was intended to be shared by the Consortium with Westinghouse's parent, Toshiba, because the problems were, by then, existential threats to the Project. The roll-up letter set forth in detail the history of problems on the Project and the numerous unfulfilled promises made by the Consortium. By this point, Lonnie Carter, the CEO of Santee Cooper, had already told SCE&G that they had "received so many new schedules [from the Consortium] that they are meaningless."

The failure of SCE&G to supervise the Project and correct the problems resulted in increasing costs and schedule delays. Notably, SCE&G never appointed an experienced third-party owner's engineer to oversee and supervise construction, despite that the 2008 EPC contract explicitly gave it the right to do so and despite that an experienced Bechtel recommended that option for a project of this size and complexity over the more removed and hands-off approach of a Construction Oversight Review Board ("CORB"). SCE&G chose to use a CORB instead, and productivity never improved and even continued to worsen. SCE&G also continued to use inexperienced in-house managers who had little to no nuclear construction experience and who, for years, had failed to correct the Project problems.

In the second half of 2014, SCE&G's mismanagement of the Project became far more insidious. In August 2014, after becoming increasingly concerned about the accuracy of the

Consortium's schedule and cost projections, SCE&G commissioned an internal team to review the Consortium's projections. The team was made up of experienced financial and technical experts who had spent years on the Project. In October 2014, the team delivered what was not a surprise to SCE&G's senior management (but which continued to be ignored): the actual costs for the Consortium to complete the Project would be at least \$500 million greater than the Consortium had projected in August 2014 after attempting to rebaseline the Project and forecast the Estimate At Completion costs.

The SCE&G internal review team also concluded the Project's total costs were likely to be much greater than even their own internal calculations because the construction schedule the Consortium used to project the costs was far too optimistic. Most significantly, the construction schedule in 2014 and 2015 suffered from four fatal infirmities:

- (1) the construction schedule was not fully integrated with all parts of design, procurement, engineering, and construction included to show the critical path of the Project;
- (2) the construction schedule was not resource loaded with manpower and other commodities needed to complete construction milestones;
- (3) numerous artificial constraints in the schedule did not permit the logic of construction activities to show the actual time to complete construction; and
- (4) because the completion dates were artificially constrained within the time needed to qualify for federal production tax credits, the construction schedule assumed both there was no risk of future delays – which were actually inevitable – and that the numerous mitigation efforts being discussed would be successfully implemented and achieve optimal results – which was not reasonable.

Without an accurate construction schedule, SCE&G knew or at the very least should have known the Consortium's schedule was not reliable and was not the best evidence of forecasted schedule and costs.

At that point in late 2014 and early 2015, SCE&G senior management and outside legal team made the conscious decision to ignore SCE&G's own internal findings. In its March 2015

filing, SCE&G misled the Commission by not revealing its internal cost estimates. Rather, in requesting that the Commission approve the new cost schedules, SCE&G only informed the Commission of the Consortium's lower forecast of costs and constrained substantial completion dates. It informed the Commission that the Consortium's estimates were the best and accurate forecasts of costs and schedule, despite that it had internally concluded that the Consortium's estimates were not achievable. SCE&G further misled the Commission by citing to its internal review of the Consortium's costs forecast as evidence that the request should be approved – without revealing that its internal review actually concluded that the Consortium's estimates were not accurate!

SCE&G doubled down on its deception later in 2015. In July 2015 – after years of delay – SCE&G belatedly acceded to its partner Santee Cooper's demand to have a third party assess the status of construction of the Project. SCE&G commissioned Bechtel Power Corporation – a well-regarded and experienced nuclear construction company – to conduct this assessment. By October 2015, Bechtel had conducted a thorough schedule assessment after downloading the Consortium's schedule files, fully integrating all aspects of the Project, resource loading the schedule based on its vast experience, removing 60 constraints from that schedule, and including the expected risk probability for a project of this size and complexity. Bechtel's schedule assessment concluded the Project was far behind the schedule projected by the Consortium and adopted by SCE&G for disclosure with the Commission and public, finding the first unit would likely not be completed until 2021. On October 22, 2015, SCE&G's senior management was informed of these conclusions by Bechtel.

SCE&G then engaged in its second serious act of deception: it hid the existence of this assessment – and the results and report – from the Commission and the ORS. Instead, SCE&G

continued to promote the plainly deficient schedule as an accurate schedule for the Project. SCE&G also wrongly claimed that an amendment to the EPC contract – the Fixed Price Amendment – cured the project of all Project issues because it placed responsibility for any cost overruns on WEC. But – as SCE&G knew at the time – these cost overruns were still a risk to the Project because they were substantial and the Fixed Price Amendment could not cure the time to complete and the associated owner’s costs that were not part of the Fixed Price Option. Likewise, the enormous burden and risk placed on WEC by the Fixed Price Amendment added additional risks of delays and costs to the Project that were ignored

Ultimately, these risks to the Project were fully realized when WEC declared bankruptcy and rejected its obligation under the EPC. Without WEC to bear the bulk of the burden of the known schedule delays and certain costs increases, SCE&G faced those burdens alone with Santee Cooper. The Project finally collapsed when Santee Cooper refused to continue to follow SCE&G based on an analysis by both Santee Cooper and SCE&G that confirmed the 2014 internal review of costs to complete and Bechtel’s 2015 schedule assessment.

II. PROCEDURAL POSTURE

Docket No. 2017-207-E was filed by the Friends of the Earth and Sierra Club on June 22, 2017, seeking to force the abandonment of the Units and disallowance of the costs of the Project. Docket No. 2017-305-E was opened on September 26, 2017, when the Office of Regulatory Staff (“ORS”) filed a Request for Rate Relief to SCE&G’s Rates pursuant to S.C. Code Ann. § 58-27-920. The Petition of SCE&G and Dominion in Docket No. 2017-370-E was filed on January 12, 2018, seeking a prudency determination regarding the abandonment of the Units, recovery of their

capital costs in the project, and approval of the Companies' merger.¹ In their Petition, the Companies offered three alternative proposals for approval of the Commission to permit the Applicants to recover costs incurred in the Project; the most ratepayer friendly of which is the Customer Benefit Plan ("CBP").²

As evidence of the significant of these proceedings to the state, there are numerous Intervenors in this action. Moreover, many customers of SCE&G presented testimony at a series of night hearings conducted by the Commission on September 24, 2018, at the Commission's Offices in Columbia, October 8, 2018 in Aiken, South Carolina, and October 15, 2018 in North Charleston, South Carolina.

In support of their Application, SCE&G and Dominion filed Direct Testimony of thirteen witnesses; ten on behalf of SCE&G and three on behalf of Dominion. This testimony largely ignored any consideration of SCE&G's prudence in constructing the Project and did little more than assert that the Project was no longer economically feasible and tout the benefits of the CBP. The Companies also claimed an entitlement to a 10.5% Return on Equity ("ROE") on the approximately \$3 billion in wasted costs for the abandoned Units.

ORS contends that SCE&G is not entitled to any costs incurred on the Project after March 12, 2015. Through the testimony of both its pre-filed and non pre-filed witnesses, ORS will show that SCE&G failed to comply with the provisions of the BLRA and committed fraud on the Commission and its customers in failing to fully disclose the severity of problems with the budget and construction schedule of the Project. ORS will provide the Commission with substantial

¹ In Order No. 2018-80 issued on January 31, 2018, the Commission Ordered the consolidation of Dockets 2017-207-E, 2017-305-E and 2017-370-E due to the commonality of issues to be presented to the Commission in all three cases.

² Just yesterday, the Companies added a fourth alternative plan, discussed below, which supports a more customer-friendly approach to the permanent abandonment rate.

evidence in support of its recommended reductions in the costs of the Project to be passed through to SCE&G Ratepayers, which will reduce the costs to be included in rates to be charged going forward by SCE&G/Dominion attributable to the abandoned Project.

Most significantly, the Commission must rule on not only the general question of the prudence of SCE&G's abandonment, but also:

1. Were any of the costs incurred by SCE&G in the attempted construction of the Units imprudent and, if so, on what date did those imprudent costs begin to accrue?
2. What conditions and savings should be required by the Commission for its approval of the SCANA and Dominion merger?
3. What authorized ROE should SCE&G be permitted the opportunity to collect on their stranded costs?
4. Whether Securitization should be considered by the Commission in these proceedings as an option to the proposals of the Companies?
5. Whether there are any economic benefits to abandonment and what ratemaking conditions should be applied to the proposed merger, and
6. Whether SCE&G should be required to refund to its ratepayers all Revised Rates which it has collected from Ratepayers, or only those Revised Rates collected after July 31, 2017.

In sum, ORS's witnesses recommended treatments, adjustments, and dates result in a recommended Optimal Benefits Plan ("OBP") which would immediately reduce rates to SCE&G's electric customers by \$193.3 million, to be followed by an increase of \$33.2 million for the first billing cycle beginning in January 2020. The Commission's adoption of the OBP would reduce the monthly bill for the average 1000 kwh SCE&G customer from the current \$147.70 per month to \$116.78, beginning upon issuance of the Commission's Order, and to \$114.59 beginning in

January 2020.³ Without merger savings, because of either no merger or deferred merger savings, the average monthly bills would be \$118.98 for the twenty-year amortization period.

III. LEGAL ARGUMENTS SUMMARY

1. SCE&G's Imprudent Conduct.

ORS summarized SCE&G's imprudent conduct in the opening of this brief (and, thus, will not restate the evidence here). In support of the ORS position, ORS witness and licensed Professional Engineer Gary Jones provides testimony (Direct, pgs. 9-16), to establish that SCE&G knowingly and intentionally withheld key information from the Commission and ORS regarding the schedule and cost to complete the Units. The testimony of ORS witness Anthony James provides a detailed analysis of the statutory basis for the ORS assessment (Direct, pgs. 11-13). Furthermore, ORS witness Norman Richardson shows that it would have been economically prudent for SCE&G to have abandoned the Project in 2015 given the completion schedule prepared by the Bechtel Corporation.

2. Merger Approval Conditions.

There are several key conditions which ORS believes the Commission must order should it rule that SCANA be acquired by Dominion. These conditions are spelled out in the testimony of ORS witness Lane Kollen (Direct, pgs. 62-79).

³ One week before the hearing, Dominion Energy filed an Alternative Customer Benefits Plan, showing that the Joint Applicants can afford a monthly bill for the average residential household of less than \$127. This is less than that previously offered and confirms a write-off of approximately \$2 billion for disallowed construction costs, consistent with ORS's conclusion that all construction costs after March 12, 2015 should be disallowed and does not harm the financial integrity of the utility. Therefore, while the Alternative Plan from the Joint Applicants does not go far enough, we believe it proves the other plans offered by the Joint Applicants can and should be disregarded.

3. Authorized ROE.

The Commission is not required to adopt or extend the application of the Return on Equity (“ROE”) previously awarded to SCE&G under BLRA proceedings and Orders. Under the abandonment provision of the BLRA, S.C. Code Ann. § 58-33-280(K), “[t]he Commission shall order the amortization and recovery through rates of the investment in the abandoned plant as part of an order adjusting rates under this article.” A current calculation of an appropriate ROE must, therefore, be a part of the Commission’s calculation of the mandatory adjustment of rates.

ORS witness Richard Baudino will explain that the ORS’s Recommendation of a 9.1% ROE is based on a rate which is consistent with a prudently operated and financially sound regulated utility. ORS asserts that the Companies should not be entitled to earn a higher return on their investment in the Project due to SCE&G’s own mismanagement. Furthermore, Ratepayers should not be required to pay higher rates, and SCE&G should not be financially rewarded, on the basis of ORS’s recommendation for the disallowance of certain costs in this proceeding.

4. Use of Securitization.

The potential use of securitization is the most advantageous solution to both the ratepayers and the utility. Although ORS has presented its Optimal Benefits Plan as the best solution under current law, if the South Carolina General Assembly enacts securitization legislation, ORS witness Kollen recommends (Kollen Direct, pgs. 9 - 10) that the Commission direct SCE&G to securitize allowable New Nuclear Development (“NND”) abandonment costs. Under securitization, financing the right to collect the allowable NND costs would be sold to a third-party special purpose entity. This debt would be financed by the third party with low-cost, high-quality debt to significantly reduce the cost of financing the allowable NND costs. The use of securitization to

reduce NND costs would result in a rate increase of between \$50.9 million and \$33.8 million less than the current ORS recommendation under the Optimal Benefits Plan.

Therefore, ORS recommends that the Commission adopt a caveat to its final order in these proceedings to provide that if the General Assembly enacts a securitization law, the Commission may reconsider requiring the parties to securitize allowable NND costs upon the request of an interested party.

5. Abandonment and Merger Rate Conditions.

As noted in the testimony of ORS Witnesses Lane Kollen and Norman Richardson, ORS supports the proposal to abandon construction of the Units. As detailed in Kollen's direct testimony (pgs. 62-79) ORS, does not oppose the proposed merger provided that several recommended merger conditions are adopted by the Commission. Ratemaking conditions include tax and merger savings which should be credited to ratepayers and a freeze on base rates until at least January 1, 2021. Additional conditions recommended by Mr. Kollen include those addressing the cost of new generating capacity, local employment, affiliated transactions, credit quality and service quality. By adopting the ORS recommendations, the Commission can ensure that the costs recovered by Companies are prudent, just and reasonable, correctly calculated and minimized.

6. Revised Rates Refund.

ORS recommends through the testimony of its witnesses Jones (Direct, pg.4), James (Direct, pg. 8), and Kollen (Direct pgs. 26-29) that the revised rates increases granted under Commission Orders 2015-712 and 2016-758 associated with the imprudent cost increases and schedule changes occurring after March 12, 2015, should be rolled back and the amounts already collected for these revised rates refunded to customers in the form of a liability applied to reduce the recovery of

allowed NND costs. Additionally, all revised rates collected after abandonment on July 31, 2017 (August through March 2017) must be refunded to ratepayers because S.C. Code Ann. §§58-33-220(17) and 58-33-275(c) require a plant to be under construction for the collection of revised rates. Moreover, SCE&G's argument that it has a "property interest" in revised rates has already been rejected by U.S. District Court Judge Michelle Childs in an Order issued on August 6, 2018 in Civil Action No. 3:18-CV-01795-JMC, and filed as part of ORS's initial pre-filed testimony in the -305-E docket.

IV. CONCLUSION

ORS will present reliable and substantial evidence to support a decision by the Commission in adopting the ORS's Optimal Benefits Plan. Based on the recommendations of ORS witnesses Jones, Kollen, Major, Richardson, and Sullivan; ORS recommends reducing SCE&G's base rates by \$445,000,978 to remove collected revenue associated with SCE&G's BLRA revised rates proceedings. ORS further proposes, in part, that the Commission implement:

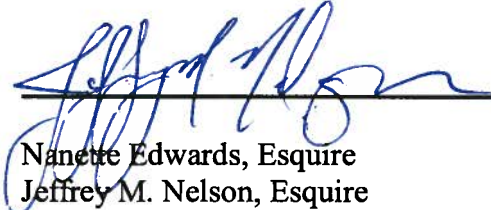
- (1) a Capital Cost Recovery Rider to permit the SCE&G to collect \$86,172,247 annually in prudently incurred NND costs,
- (2) a Tax Savings Rider to reduce retail electric rates by \$98,701,976 annually,
- (3) a Merger Savings Rider to reduce retail electric rates by an additional \$35 million (2019) to \$70 million (beginning in 2020) annually, if the Commission approves the merger.

ORS also urges the Commission to adopt its recommendations regarding merger conditions as described in ORS witness Kollen's direct testimony at pages 62 through 79.

As detailed in ORS witness Seaman-Huynh's Direct testimony (pg. 15), the net impact of ORS's recommendations under the proposed Optimal Benefits Plan, if adopted in full by the

Commission, would reduce the average monthly bill for an SCE&G customer consuming 1,000 kWh to \$114.59 by 2020 from the current rate of \$147.70. This is a just and reasonable result for customers who have been a victim of SCE&G's fraud during construction of the now-abandoned Project and who have paid to date more than \$2 billion for no possibility of any used and useful energy generation from the Project. Thank you for your role in setting a just and reasonable permanent rate charged to customers for the abandoned Project.

Respectfully submitted,



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